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VETO MESSAGE

OF

GOV. THOMAS O. MOORE,

ON THE

COTTON BILL,

TO THE

HOUSE OF REPRESENTATIVES.



BATON ROUGE:

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1861.

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VETO MESSAGE.

EXECUTIVE OFFICE, Baton Rouge, January 21st, 1862.

*To the Honorable the Speaker and
Members of the House of Representatives:*

I return to the House of Representatives the "Act for the relief of the cotton planters of the State of Louisiana." After a careful examination of its provisions, made with every desire to give effect to the expressed wish of the Legislative Department of the Government, when consistent with the conscientious discharge of my own functions, I find my objections to the bill so serious and vital in their character as to compel me to withhold my approval. I shall proceed to state those objections.

The 108th article of the Constitution provides that "the State shall not subscribe for the stock of, nor make a loan to, nor pledge its faith for the benefit of any corporation or joint stock company created or established for banking purposes, *nor for any other purposes* than those described in the 109th article. It is argued that the words I have italicised have reference to corporations or joint stock companies, and are designed to enlarge the circle of their prohibited purposes. I do not so construe it. The article is a manifest prohibition to the State pledging its faith for any purpose except that which is specified in the following article, and as the object to which the faith of the State is proposed to be pledged in this bill, is not pretended to be included in the powers granted by the 109th article, I think it comes within the prohibition previously declared *B. Chalmers*

Whatever doubt, however, might exist as to the correctness of this interpretation and its application to the present bill, I find in the 111th article of the Constitution an imperative requirement, which this bill fails to meet. It reads "whenever the Legislature shall contract a debt exceeding in amount the sum of one hundred thousand dollars, unless in case of war to repel invasion or suppress insurrection, they shall, in the law creating the debt, provide adequate ways and means for the payment of the current interest, and of the principal when the same shall become due."

The bill now under consideration, after prescribing certain formulas for

the affidavit of the applicant for relief, the appraisement of the cotton, and the certificate of attestation, provides that the applicant shall "execute his bond in favor of the Governor of the State and his successors in office, with one solvent security, when the applicant owns no real estate situated in this State and equal to the bond and above the mortgages on his property, in amount not exceeding five cents per pound of said cotton when ginned, or one and a quarter cents in the seed, payable when the said cotton shall be sold;" and attaches to this bond so executed "the force and effect of a twelve months' bond." It provides for the release of any privilege upon the cotton to be endorsed on the bond, and in case of a refusal by the holder, of the privilege to release for the issuance of Treasury notes to the extent only of the excess in the value of his cotton, on the basis of appraisement previously stated over the privileges.

It is upon the presentation of these bonds, with the antecedent documents, that the Auditor of Public Accounts shall issue his warrant on the State Treasurer for the amount of the bond, less an insignificant reduction. The bond itself is to contain a positive stipulation for the refunding of its amount to the State Treasury when the cotton shall be sold, and pledges the proceeds of the sale of said cotton to its redemption (Sec. 10), and is to be recorded in the book of Judicial Mortgages in the proper parish, such registry operating as a judicial mortgage on the property of the applicant. If the applicant shall fail to appropriate and pay, or cause to be paid, the proceeds of the sale of the cotton so pledged in redemption of his bond, the Auditor is required to issue a writ of *fiery facias*, with interest from its date, against the property of both principal and surety, "within eight months after the blockade is raised," which process is to have the "same force and effect of a *fiery facias* issued upon a twelve months' bond."

These are the "ways and means" provided by this bill for the redemption and payment of seven millions of Treasury notes, all of which become due "at the expiration of one year after the blockade is raised," and which on their face are declared to be secured by a "pledge of the cotton crop of the State of Louisiana, of 1861, and the faith of the State pledged"—Sec. 2. I do not deem them adequate.

The cotton crop of Louisiana of 1861, cannot be pledged by the State, either for that or any other purpose. It is not hers to pledge. It belongs to individuals in most part—is private property, and cannot be taken for public uses, except under the guarantees of the Constitution. It is not all within her limits, since a portion of it has already been exported. It is obviously then beyond the power of the State to pledge the cotton crop of 1861. It is, however, within the power of its owners, and it becomes important to ascertain what portion of that crop is pledged by this bill, and whether that limited pledge is more than nominal.

It is very clear that only that "quantity of cotton" is pledged which is in the hands of the applicant "as owner, administrator, executor, tutor or agent," and it is, therefore, the proceeds of the sale of such quantity only that is required to be paid into the Treasury in redemption of his bond. No cotton in the hands of any owner who does not choose to become an applicant, can be pretended to be pledged. If the applicant chooses to sell his cotton, he is at perfect liberty to do so. It remains in his hands. If he sells, the purchaser obtains a good title. The State cannot proceed either against the cotton or its proceeds. Not only is there no machinery provided by which the simulated privilege of the State can be enforced, but in point of fact and law, none is created by the act. I do not overlook the provisions of the 17th Section, which denounces the felonious alienation with a criminal penalty. The enforcement of that provision by punishment of the felonious act does not advance a step towards the requirements of the Constitution, that adequate ways and means shall be provided for the payment of the note. The punishment of the criminal act does not constitute a part of the machinery for the enforcement of a civil obligation. What is that machinery?

By the 14th Section, the Auditor is authorized to issue a *fi. fa.*, within eight months after the blockade is raised against the property of the defaulting obligor and his surety. But can the Legislature, or the State officer acting under its mandate, seize the property of any one for *debt*? It may for taxes, for they are, in the nature of a contribution, exacted by Government for its purposes, but it belongs to the Judiciary to determine whether or not the debt exists. The Legislature cannot exercise judicial sanctions. That department can make laws and repeal them, but in doing so, it cannot take from a citizen the rights he may have acquired under a particular law, nor can it assume the duties and powers of the judicial department and decree or adjudge how the laws shall be administered in relation to a particular right. It can say for what breaches of its enactments, or for what omissions of duties imposed, fines and forfeitures shall be incurred; but it has no right to try a case on an allegation of a breach of what the law requires, or of the non-performance of an obligation or contract, and to decide the case in favor of the State or against it, and then execute its own decree.

In the discussion of the adequacy of the ways and means provided by the bill for the payment of the debt it creates, it is necessary to proceed further. The whole of the seven millions becomes due at the expiration of one year after the blockade is raised. The proceeds of the bonds are the sole security for the redemption of these notes. Payment is not to be exacted until within eight months after that event. The Auditor is permitted to grant the longest delay to the debtor, and but four months will remain to make the property of the debtor and his surety available for

the purpose of payment. If litigation ensues and the shield of injunctions is employed to postpone, as it will assuredly be, the time of payment will be deferred until long after the maturity of the Treasury notes. If this contingency be even probable, the "ways and means" are not "adequate."

The property of the applicant will, in many cases, be encumbered with mortgages anterior to that of the State. It is exposed at public sale under the Auditor's *fi fa*, it must bring enough to satisfy the older mortgages. Otherwise, nothing will be made to the Treasury by the issuance of the *fi fa* and exposure at sale. By the 15th section, the Sheriff is directed to execute the writ as in case of twelve months' bonds. The property will then be exposed for cash, and under a recent act of this Legislature for its full appraisement, made as of April, 1861. If these requisites are not complied with, by that act the property is restored to the defendant, and the Sheriff (the State) must pay the costs.

These results will not follow in every case, but if the prompt and punctual payment of these bonds is the only ways and means provided for the payment of the Treasury notes, those ways and means cannot be adequate if they follow in any case.

The 6th section, prescribing the form of the bond, stipulates the period of maturity as the time when the "cotton shall be sold," and the 14th section provides for issuing a *fieri facias* "in case the applicants shall not appropriate and pay, or cause to be paid, the proceeds of the sale of said cotton into the State Treasury." What becomes of this obligation if the cotton is lost by fire or the dangers of the river? There is no obligation to insure, and if insured, no obligation to transfer the policy. Is it said that it matters not whether the cotton be burned, or whether a sale is ever made, so only that the bond is paid? But if the cotton be not sold, then the proceeds of sale cannot be paid in, and the contingency then does not occur upon which alone the Auditor can issue his writ, for he can only issue it *in case* the applicant shall not pay the *proceeds of the sale of said cotton* into the Treasury. Where, then, is the remedy when the applicant neither sells his cotton nor pays his bond?

As a conclusive test of the adequacy of the ways and means which the Constitution requires to be provided, it is proper for each individual to inquire if he were himself proposing to lend money, (for this bill does but provide a loan,) would the security proposed in this bill be regarded as sufficient if the cotton planter applied to him for a loan? I do not think there can be but one answer to such an inquiry.

There is another objection, not necessary to be elaborated, having reference to the prohibition contained in the Provisional Constitution of the Confederate States, which is at this time in force. That Constitution prohibits any State from emitting bills of credit, and the power assumed in this bill most clearly comes within that prohibitive clause. If it be denied,

that this Constitution is in operation, it is only necessary to say (although this is an issue foreign to the present legitimate inquiry) that both governments cannot be understood to exist at the same time. The new government does not commence until the old government expires. If the permanent Constitution had been our supreme law since its ratification by five States, the legislation of the Provisional Congress since that time would be of no effect, since by that Constitution the legislative power is vested in two Houses. It is analagous to the succession of the Constitution of the United States to the Articles of Confederation, the operation of which was in conformity to the views I have expressed.

There are other features in this bill which I do not approve, but I have confined my objections to those wherein there is a failure to comply with constitutional requirements.

THOS. O. MOORE.

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